



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18 VAC 50-22
Regulation title	Residential Building Energy Analyst Firms
Action title	Board for Contractors –Residential Building Energy Analyst Firms
Date this document prepared	June 8, 2011

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

- 1) Please explain why this is an emergency situation as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

1. This is an emergency situation pursuant to § 2.2-4011 of the Code of Virginia. Chapter 865 of the Acts of the 2011 General Assembly, which was the result of SB 1375 requires regulations to be effective within 280 days of enactment.

2. The proposed regulations include provisions that address residential building energy analyst firm licensing requirements pursuant to the above-named Chapter.
3. The board intends that the submission of this form serve as both an Emergency/NOIRA as well as a NOIRA. The board does not intend to split the Emergency/NOIRA from the NOIRA as a separate process and approved the combination of both.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary. Please include a citation to the emergency language.

Section 54.1-1146 authorizes the board for contractors to issue residential building energy analyst licenses and residential building energy analyst firm licenses to applicants that meet specified criteria. Enactment clause 2 of Chapter 865 of the 2011 Acts of Assembly requires that the board for contractors shall promulgate regulations to implement the provision of this act to be effective within 280 days. § 54.1-201(E) states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The proposed amendment addresses residential building energy analyst firm licensure for firms and as required by Chapter 865 of the Acts of the 2011 General Assembly, which were the result of SB 1375.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

During the 2011 legislative session, the General Assembly reviewed proposed legislation and received comment during committee meetings and, as a result of that review

passed SB 1375 requiring the Board for Contractors begin the regulation of individual residential building analysts and firms that provide that service. The determination of the need to regulate this profession was legislative and not at the discretion of the Board.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 50-22-10		none	Provides a definition of “residential building analyst firm.” While the statutes provide definitions of a licensed residential building analyst and a residential building energy analysis, there is no definition provided for a firm that provides such services, although the statutes require that these firms be licensed. This definition simply provides that if a business entity performs the analyses defined in the statute, then they are a residential building analyst firm.
18 VAC50-22-100		Fees	The proposed change includes the cost of obtaining a “Residential Building Energy Analyst Firm” license. The cost is equal to the Class C Contractor License fee of \$210 and does not include a Recovery Fund assessment fee.
18 VAC50-22-130		Qualifications for Renewal	The proposed change requires “Residential Building Energy Analyst Firms” to meet the qualifications of initial licensure upon renewal.
18 VAC50-22-140		Renewal Fees	The proposed change includes the renewal fee for the “Residential Building Energy Analyst Firm.”
18 VAC50-22-160		Reinstatement required	The proposed change requires “Residential Building Energy Analyst Firms” to meet the qualifications of initial licensure upon reinstatement.
18 VAC50-22-170		Reinstatement Fees	The proposed changes includes the reinstatement fee for the “Residential Building Energy Analyst Firm.”
18 VAC50-22-180		Status of licensee during the period of Reinstatement	The proposed change places the “Residential Building Energy Analyst Firm” under the jurisdiction of the board during this time period. This provision of the regulations provides protection to consumers who employ licensees during a reinstatement

			period and gives the Board regulatory authority over the licensee for activities during this period. An identical provision is in place for firms holding a contractor license.
18 VAC50-22-260		Prohibited Acts	<p>The proposed changes add residential building energy analyst firms to the section. In two instances (18 VAC 50-22-260 B 5 & 6) the language is amended to include these firms in acts that include negligence, incompetence and misconduct.</p> <p>Two new prohibited acts are added that are specific to residential building energy analyst firms for failure to ensure employees are conducting analyses in accordance with the standards set forth by the Board, the U.S. Environmental Protection Agency, the U.S. Department of Energy and the Energy Star Program, for the completion of residential building energy analyses. A second prohibited act makes it a violation not to maintain required liability insurance at any time during licensure.</p>

The following new sections are proposed:

18VAC50-22-65	Requirements for Residential Building Energy Analyst Firms	<p>This newly proposed section outlines the eligibility criteria for licensure as a residential building analyst firm. To keep the requirements as simple as possible, nomenclature used in the licensing of contractors was used, as applicable; to identify specific individuals affiliated with the license, including the qualified individual (in this case one holding the individual license issued in 18 VAC 50-30) and the members of responsible management.</p> <p>Language requiring information including past & current licensure, financial status (required by § 54.1-1145 B 5), and past criminal history, were also taken from provisions in the licensing of contractors and adapted for use with this program.</p> <p>§ 54.1-1145 C 4, requires “necessary insurance coverage as determined by the Board.” In determining the amount and type of coverage required the board contacted the only other state found that actually regulates this profession. While other states accept and promote the independent certification of energy auditors and analysts, only Missouri was found to have an actual regulatory</p>
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		<p>program in place. The Missouri Department of Natural Resources certifies home energy auditors and, as a prerequisite for that certification, requires that the company maintain \$100,000 of liability insurance. The Energy Start program, while not requiring insurance for those individuals who certify homes for Federal Tax incentives, does suggest that businesses have liability insurance in place. The Residential Energy Services Network (RESNET), a widely accepted certification program, requires members to hold \$500,000 of liability insurance as a requirement for certification. The Building Performance Institute, another widely accepted certification program, requires \$1,000,000 of liability insurance as a requirement for certification. Costs of insurance vary widely, based on amount of coverage, types of coverage, deductibles, past claim history and underwriting, however a quick survey of local companies indicates that liability insurance in the range of \$500,000 to \$1,000,000 was available for an annual price of \$600-\$1500 depending on the coverage variable chosen. The Board determined that a \$500,000 minimum insurance requirement for residential building energy analyst firms would provide adequate coverage and not be overly burdensome on the licensee.</p>
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Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

Chapter 865 of the Acts of the 2011 General Assembly and the Code of Virginia mandate the promulgation of regulations to address residential building energy analyst licensure, residential building energy analyst firm licensure, approval of accredited training programs for residential building energy analysts, and standards for performing residential building energy analyses. The statutory addition of § 54.1-1144 defines “Licensed residential building energy analyst,” “Accredited building energy analyst training program,” and “Residential building energy analysis.” Additionally, statutory addition §54.1-1145 lists the eligibility criteria required to become a “licensed building energy analyst.” §54.1-1146 of the Code of Virginia

states that the board for contractors must “establish procedures and requirements” to license residential building energy analysts, residential building energy analyst firms, approval of accredited building energy analysts training programs, and standards of performing residential building energy analysis. The Board determined that certain regulations were required to implement these statutory procedures and requirements.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Eric Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, fax to (804) 1-866-430-1033, or email to contractors@dpor.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate the extent to which an ad hoc advisory group or regulatory advisory panel will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board will use the participatory approach to develop a proposal if it receives at least 15 written requests to use the participatory approach prior to the end of the public comment period. Persons requesting the agency use the participatory approach and interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and

their organization (if any). Notification of the composition of the advisory panel will be sent to all applicants.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No impact on families in Virginia has been identified as resulting from the proposed amendment to the regulation.